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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,931	08/07/2001	Kim R. Smith	163.1471US01	4550

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/923,931	SMITH ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE filed 11/30/04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13-43 and 75-78* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-43 and 75-78* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-11, 13-43, and 75-78 are pending. Claims 12, 44-74 and 79-84 have been canceled.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 11/30/04 has been entered.

Claim Objections

Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

With respect to instant claim 16, this claim fails to further limit instant claim 1 because it recites an upper limit of "95 wt% active oxygen" while claim 1 recites an upper limit of 90 wt%.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11, 13-16, 18-22, 26-33, 36-39, 42, and 75-78 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 4026806.

'806 teaches treating carpeted floors in a process with an alkaline cleaning solution which is prepared from a solid inorganic peroxide, an activator for the peroxide, a tenside, and other additives. See page 2, lines 1-10. The textile is soaked with a cleaning solution and if required, is subjected to a mechanical treatment, the solution is then removed for the most part from the carpet, for example, by vacuuming, and the textile is dried. See page 4, lines 25-35. The cleaning solution to be used on the

carpets is obtained by dissolving solid inorganic peroxide, the activator for this peroxide, and the tenside in water. The pH value of the ready-to-use solution should be preferably between 9 and 12, in particular between 9.5 and 11. Further additives include sequestration agents, soil-repellent agents, inorganic salts, peroxide stabilizers, etc. See page 15, lines 1-5. Examples of suitable sequestration agents include sodium carbonate, pentasodium triphosphate, tetrasodium pyrophosphate, sodium silicate, trisodium citrate, trisodium nitrilo triacetate. Their concentration in the cleaning solution is generally not over 2.5 g. Additionally, heavy metal sequestering agents such as EDTA and hydroxy ethane diphosphonic acid may be used in the compositions in amounts usually not over 0.1 percent by weight. See page 16, lines 1-10.

Specifically, '806 teaches solid compositions suitable for forming a cleaning solution which contain 5% oxoalcohol C14-C5 EO, 25% sodium carbonate, 10% sodium sulfate, 40% sodium perborate, 20% TAED, having a pH of 10.8. Another embodiment includes 3% oxoalcohol C14/C15 EO, 27% sodium carbonate, 60% sodium perborate, 10% TAED, having a pH of 10.5. '806 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '806 anticipate the material limitations of the instant claims.

Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4026806.

'806 is relied upon as set forth above. However, '806 does not teach, with sufficient specificity, a method of cleaning carpet or upholstery, with a composition

containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '806 suggests cleaning carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 5-11, 13, 14, 17-19, 22-33, 35-39, 42, and 75-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (US 6,159,922).

Williams teaches bleach compositions comprising percarbonate bleach and an amino tricarboxylic acid exhibit a reduced tendency to deposit calcium carbonate insolubles on substrates being bleached. See Abstract. The percarbonate can be present at levels of between 1% to 50% by weight. See column 2, lines 45-60. Builders can also be used in the compositions in amounts from 1% to 80% by weight. Builders include polycarboxylates, phosphates, etc. See column 16, line 10 to column 17, line 69. Heavy metal ion sequestrants are generally used in amounts from 0.005% to 20% by weight. Examples include EDTA, NTA, etc. See column 25, lines 9-50. The pH of

the compositions in water is from 8 to 12.5. See column 28, lines 60-69. Additionally, surfactants may be used in the composition including anionic, nonionic, cationic, etc., in amounts from 0.2 to 30% by weight. See column 14, lines 35-69. Note that, the Examiner asserts that the laundry composition as taught by Williams would also suggest cleaning of upholstery since many items of "upholstery" such as cotton or polyester chair covers are washed along with other laundry items in an automatic washing machine.

Williams does not teach, with sufficient specificity, a method of cleaning upholstery using a cleaning composition comprising a sequestrant, builder, an active oxygen compound, water, surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean upholstery using a cleaning composition comprising a sequestrant, an active oxygen compound, water, surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Williams suggests cleaning upholstery using a cleaning composition comprising a sequestrant, builder, an active oxygen compound, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 5, 7-11, 13, 14, 17-20, 26-33, 35-39, 42, and 75-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Trani et al (US 5,703,031).

Trani et al teach a granular laundry composition which comprises a source of available-oxygen, a stabilizer like chelant together with an alkali metal salt of silicate. Optionally, the compositions may further comprise a soil suspender and be formulated so as to allow the pH of the wash solution below 9.5 and thereby boost the cleaning performance on particulate soil. See Abstract. The compositions comprise from 10% to 80% by weight of the total composition of a source of available oxygen. Suitable chelating agents include EDTA organic phosphonates, diethylenetriamine pentamethylene phosphonates, etc. The compositions comprise from 0.01% to 5% by weight of the total composition of chelating agents. See column 3, lines 60-65. Additionally, silicates may be used in the compositions. See column 4, lines 1-69. Additionally, the compositions may contain inorganic filler salts such as alkali metal carbonates, bicarbonates, and sulphates. Also, the compositions may contain up to 20% by weight of citric acid. See column 5, line 15 to column 6, line 25. Note that, the Examiner asserts that the laundry composition as taught by Trani et al would also suggest cleaning of upholstery since many items of "upholstery" such as cotton or polyester chair covers are washed along with other laundry items by soaking.

Specifically, Trani et al teach a granular composition containing 30% sodium percarbonate, 2% TAED, 30% sodium carbonate, 5% citric acid, 2% polyacrylate, 25% sodium bicarbonate, and 5% LAS. Trani et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teaching of Trani et al anticipates the material limitations of the instant claims.

Claims 15, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trani et al (US 5,703,031).

Trani et al are relied upon as set forth above. However, Trani et al do not specifically teach cleaning upholstery using a cleaning composition comprising a surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean upholstery using a composition containing a surfactant and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Trani et al suggest cleaning upholstery using a composition containing a surfactnant and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claim 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trani et al (US 5,703,031) as applied to claims 1, 5, 7-11, 13, 14, 17-20, 24, 25, 26-33, 35-39, 42, and 75-78 above, and further in view of Williams (US 6,159,922).

Trani et al are relied upon as set forth above. However, Trani et al do not teach the use of nonionic surfactants in addition to the other requisite components of the composition as recited by the instant claims.

Williams is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a nonionic surfactant in the composition taught by Trani et al, with a reasonable expectation of success, because Williams teaches the use of nonionic surfactants in a similar detergent composition and, further Trani et al teach the use of surfactants in general.

Claims 1, 5, 7-11, 13, 14, 16-18, 26-43, and 75-78 are rejected under 35 U.S.C. 102(e) as being unpatentable over Man et al (US 2003/0162685). Note that, all subject matter relied upon in US 2003/0162685 finds support in the parent application 09/874841 or US 2003/0109403.

'685 teaches solid compositions for cleaning carpet in powder, solid, or agglomerate forms which include an organic sequestrant including phosphonate, aminocarboxylate, or mixtures thereof; an active oxygen compound, water, and surfactant. The solid compositions can be dissolved in an aqueous solution creating an aqueous concentrate of the active oxygen at a useful concentration. See Abstract. '685 disclosed the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the broad teachings of '685 anticipate the material limitations of the instant claims.

Claims 15 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Man et al (US 2003/0162685).

Note that, all subject matter relied upon in US 2003/0162685 finds support in the parent application 09/874841 or US 2003/0109403.

'685 is relied upon as set forth above. However, '685 does not teach, with sufficient specificity, a method of cleaning carpet with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '685 suggests cleaning carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11, 13-40, 43, and 75-78 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28-41 of copending Application No. 10/214625 and claims 1-25 of 10/299536. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 28-41 of 10/214625 and claims 1-25 of 10/299536 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because claims 28-41 of copending Application No. 10/214625 and claims 1-25 of 10/299536 suggests cleaning carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
December 19, 2004